RAILROADS — REGULATION OF RATES — STATUTORY PENALTY FOR VIOLATION OF STATE COMMISSION'S ORDER. — The Georgia Railroad Commission ordered the defendant railroad to cease demanding prepayment of freight from one connecting carrier and not from another, in order to avoid discrimination in favor of the longer route in violation of a state statute. The defendant took no steps to contest the order, and after two months the state brought suit for the penalty provided by the statute for violating the orders of the commission. *Held*, that the railroad may be held liable. *Wadley Southern R. Co.* v. *Georgia*, 235 U. S. 651.

The commission's order was found reasonable by the state supreme court. *Wadley Southern R. Co.* v. *Georgia*, 137 Ga. 497, 73 S. E. 741. In view of the discretion vested in the commission, this decision is unimpeachable, although on somewhat similar facts other courts have found that there was no discrimination. *Gamble-Robinson Commission Co.* v. *Chicago & N. W. R. Co.*, 168 Fed. 161. See 27 HARV. L. REV. 754. The question before the court in the principal case, therefore, was whether the order violated the Fourteenth Amendment. Such administrative orders are legislative in nature, though founded on judicial inquiry, and the parties affected are clearly entitled to review by the courts. *Prentis* v. *Atlantic Coast Line Co.*, 211 U. S. 210; *Louisville & N. R. Co.* v. *Garrett*, 231 U. S. 313. Accordingly, statutes which provide penalties so enormous as to deter litigating the validity of the rates imposed, have been held invalid as denying the equal protection of the laws and as depriving the carrier of property without due process of law. *Ex parte Young*, 209 U. S. 123; *Willcox* v. *Consolidated Gas Co.*, 212 U. S. 19, 53. The courts have reasoned that the carrier would rather obey an invalid order than risk incurring the tremendous penalty which might be imposed after long litigation. *Missouri P. R. Co.* v. *Tucker*, 230 U. S. 340, 349. See *Ex parte Wood*, 155 Fed. 190, 198. Where the statute expressly provides, however, for a judicial determination of validity, the present tendency is to construe the statute as imposing no penalty except for violations subsequent to such determination. *Washington* v. *Oregon R. & Nav. Co.*, 68 Wash. 160, 167, 123 Pac. 3, 6. This result has also been reached even where there was no express provision. See *Coal Co.* v. *Conley*, 67 W. Va. 129, 159, 67 S. E. 613, 626. If, however, as in the present case, the railroad fails to exercise seasonably its right to judicial review, and the rate or order is regarded as valid, the penalty may then be imposed for violations from the outset.

SELF-DEFENSE — DUTY TO RETREAT — ATTACK BY ANOTHER INHABITANT IN ONE'S OWN HOME. — The defendant, being attacked by his son in the house where both resided, shot and killed his assailant without attempting to escape. *Held*, that the defendant is excused. *People* v. *Tomlins*, 107 N. E. 496 (N. Y.).

By the weight of authority, a man who is attacked must "retreat to the wall," if he can do so with safety, before killing his assailant. *Commonwealth* v. *Drum*, 58 Pa. St. 9; *Patterson* v. *State*, 146 Ala. 39, 41 So. 157. *Cf. Erwin* v. *State*, 29 Oh. St. 186; *Runyan* v. *State*, 57 Ind. 80. See 16 HARV. L. REV. 567. But one who is attacked in his own dwelling, or on his premises adjacent thereto, need not seek safety in flight, since a man's home is his "castle," and he should not be compelled to leave its shelter. *State* v. *Bissonnette*, 83 Conn. 261, 76 Atl. 288; *State* v. *Rutledge*, 135 Ia. 581, 113 N. W. 461. He need not even retreat to another part of the house. *Brinkley* v. *State*, 89 Ala. 34, 8 So. 22. It would seem wholly immaterial, furthermore, that the assailant lived under the same roof, and accordingly the rule has been applied to attacks by a joint tenant, or by a husband or wife. *Jones* v. *State*, 76 Ala. 8; *Hutcherson* v. *State*, 170 Ala. 29, 54 So. 119; *Watts* v. *State*, 177 Ala. 24, 59 So. 270. Guests are accorded this same privilege of resistance. *Jacobs* v. *State*, 146 Ala. 163, 42

So. 70. Boarders, on the other hand, must retreat to their own rooms, at least when attacked by another inhabitant of the house. *People* v. *Sullivan*, 7 N. Y. 396; *State* v. *Dyer*, 147 Ia. 217, 124 N. W. 629. In opposition, however, to the whole doctrine exempting one attacked in the dwelling-house from the duty to retreat, it may be argued that when the assailant has entered the "castle," it has ceased to be protection for the owner, and that there is accordingly no longer reason why he should not flee to avoid the necessity of killing. See MAY, CRIMINAL LAW, 2 ed., § 67.

SURETYSHIP — SURETY'S DEFENSES: MISCELLANEOUS — EFFECT OF ASSIGNMENT OF BUILDING CONTRACT BY CONTRACTOR ON RIGHTS OF MATERIALMEN. — The defendant company was surety on the bond of a contractor for the faithful performance of a contract with the United States for the erection of a naval station, and for the prompt payment of all persons supplying "labor and materials in the prosecution of the work." The contractor, being unable to complete the work, transferred his business, without the knowledge of the United States or the defendant, to a new corporation of which he was manager. The materialmen continued to furnish materials to this corporation with knowledge of the assignment, and on the bankruptcy of the contractor and the new corporation, seek to hold the surety company on the bond. *Held*, that they may recover. *The John Davis Co.* v. *Illinois Surety Co.*, 47 Chic. Leg. News 177 (C. C. A., Seventh Circ.).

Sureties on the bonds of contractors for the prompt payment of all persons furnishing labor and materials for the work are generally held directly liable to materialmen. *Abbott* v. *Morrissette*, 46 Minn. 10, 48 N. W. 416. Such a bond is construed as essentially a substitute for a mechanics' lien, and extends to materials furnished to a sub-contractor or assignee. *Hill* v. *American Surety Co.*, 200 U. S. 197; see *Hardaway* v. *National Surety Co.*, 150 Fed. 465, 471. Accordingly, the surety may remain liable on his independent obligation to the materialmen, although discharged from his undertaking to the landowner by some act of the latter. *Doll* v. *Crume*, 41 Neb. 655, 59 N. W. 806. In the principal case, therefore, even the acceptance of a new contractor by the government would not in itself have discharged the defendant from its obligation to the materialmen. The absence of such assent, however, did show that there had been no novation of principals, and that the continued furnishing of materials by the materialmen did not involve, therefore, any recognition of a new principal on their part. The materialmen, then, must be deemed simply to have taken the new corporation as additional security, and to have retained their rights against the contractor. Such conduct clearly could give the surety no legal defense, and any variation of the risk that might be involved would be too unsubstantial to discharge the surety, in view of the growing tendency of the law to hold surety companies to their obligations in spite of metaphysical variations of the risk. See *Rule* v. *Anderson*, 160 Mo. App. 347, 142 S. W. 358.

TAXATION — GENERAL LIMITATIONS ON THE TAXING POWER — FEDERAL AGENCY: STATE TAXATION OF INDIAN COAL MINES. — The United States leased the right to operate coal mines on lands in Oklahoma belonging to the Choctaw and the Chickasaw Indians, to the plaintiff, under a compact with the Indians to operate the mines in the interests of the tribes. Oklahoma then levied a gross revenue tax on all coal producers. *Held*, that the plaintiff is exempt from the tax. *Choctaw, Oklahoma, & Gulf R. Co.* v. *Harrison*, 235 U. S. 292.

That neither state nor nation can clog the governmental functions of the other by taxation is a necessary and an established proposition. *McCulloch* v. *Maryland*, 4 Wheat. (U. S.) 316; *Collector* v. *Day*, 11 Wall. (U. S.) 113. But what constitutes a governmental function is a perennial problem, not